IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5261 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHAMMIKUMAR JAYNATHBHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5261 of 2002

MR MR PRAJAPATI for Petitioner No. 1

MR HR PRAJAPATI for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/07/2002

ORAL JUDGEMENT

This writ petition has been filed by the detenu under Article 226 of the Constitution of India challenging the legality and validity of the detention order passed by the Police Commissioner, Rajkot City dated 29.11.2001 in exercise of powers vested under sub-section(1) of Sec. 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as 'dangerous person' within the meaning of section 2(c) of this Act.

On perusal of bunch of the papers, tendered with the petition, it transpires that the petitioner was found involved in 4 different offences registered with

B-Division Police Station, Rajkot for the offence punishable under sec. 454, 457, 379, 380 of IPC etc. In first offence registered on 8.11.2001, the petitioner was found involved in stilling mobile phone. In the second incident, he has taken some cash and boxes of cigar, gutkha, shampoo etc. In the third incident, he was found involved in lifting one tape recorder, cigarette and cash of Rs. 1130/ and in the last 4th incident, he was found involved in still away one stereo worth Rs. 200/. Two unregistered offences were also noticed by the detaining authority by the statements of two independent witnesses whose statements were recorded on 26.11.2001. First witness has narrated the incident allegedly occurred on 7.11.2001 and the second witness has stated about the head-strong behaviour of the petitioner in reference to the incident occurred on 19.11.2001. On careful consideration of these two statements and the offence allegedly committed by the petitioner, this Court is of the view that the subjective satisfaction recorded by the Police Commissioner branding him as a 'dangerous person' is not well founded. The alleged acts even for the sake of argument, is accepted to be true narration of the facts, even than it would not be either legal or proper to hold that said activity would affect the public order within the meaning of PASA Act. Such activity can be said to be prejudicial to the law and order and not public order. Unless the detaining authority is satisfied objectively that the activity of the detenu is prejudicial to the maintenance of public order, he is not supposed to exercise the jurisdiction vested with the authority under sec. 3 of the PASA Act.

In view of the observations made by this court in the case of Bai Amina w/o Ibrahim Abdul Rahim Alla vs. State of Gujarat & Anr., reported in 1981 GLR P. 1186 the privilege exercised by the detaining authority under sec. 9(2) of the Act in not disclosing the names of the witnesses and other relevant details is not found in accordance with the settled legal proposition. By reading the statement of witness no. 1 it emerges that the powers are not properly exercised. It was obligatory on the part of the detaining authority to come to a conclusion on consideration of all the relevant aspects that the public interest requires that the privilege should be exercised. All these set of facts and the emerging infirmity goes to the root of the validity of the order of detention and, therefore, the detention order shall have to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 29.11.2001 passed by

the Police Commissioner, Rajkot city, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)
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